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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 JUL 25 P 12: 36

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 25 2008

DOCKETED BY

IN THE MATTER OF THE JOINT APPLICATION
OF ACCIPITER COMMUNICATIONS, INC. AND
QWEST CORPORATION FOR ACCIPITER TO
EXTEND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY AND TO DELETE A PORTION
OF ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN FAVOR OF QWEST AND FOR
QWEST TO EXTEND ITS SERVICE AREA AND
DELETE A PORTION OF ITS SERVICE AREA IN
FAVOR OF ACCIPITER.

DOCKET NO. T-02847A-08-0164

DOCKET NO. T-01051B-08-0164

PROCEDURAL ORDER

BY THE COMMISSION:

On March 18, 2008, Accipiter Communications, Inc., dba Zona Communications ("Accipiter") and Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Joint Application requesting that the Commission expeditiously set the Joint Application for hearing and issue an Order (1) authorizing deletion of a portion of Qwest's service area and extending Accipiter's Certificate of Convenience and Necessity ("CC&N") to include that portion ("the Accipiter extension area"); (2) authorizing deletion of a portion of Accipiter's CC&N and adding the deleted portion to Qwest's service area ("the Qwest extension area"); (3) authorizing Qwest and Accipiter to charge, within their respective extension areas, the rates and charges in their respective tariffs on file with the Commission; and (4) stating that the Commission does not object to the Federal Communications Commission's ("FCC's") granting a waiver of the FCC study area boundary freeze to allow Accipiter and Qwest to modify their study areas consistent with the service area changes authorized in the Order.

The Accipiter extension area has the following legal description:

T6N, R2W, G&SRB&M: All of Sections 4-9, 17, and 18; and

T7N, R2W, G&SRB&M: All of Sections 31-33 and the western one-half of Section 34.

1 The Qwest extension area has the following legal description:

2 T3N, R2W, G&SRB&M: All of Sections 29 and 32, the western one-half of Section
3 28, and the southeastern one-quarter of Section 31

4 On April 15, 2008, Commission Utilities Division Staff ("Staff") issued a Letter of
5 Insufficiency and First Set of Data Requests to Accipiter and Qwest.

6 On May 9, 2008, Qwest filed responses to the Letter of Insufficiency and First Set of Data
7 Requests.

8 On May 14, 2008, Accipiter filed responses to the Letter of Insufficiency and First Set of Data
9 Requests.

10 On June 11, 2008, Staff issued a Second Letter of Insufficiency and Second Set of Data
11 Requests to Accipiter.

12 On June 23, 2008, Accipiter filed responses to the Second Letter of Insufficiency and Second
13 Set of Data Requests.

14 On July 23, 2008, Staff issued a Letter of Sufficiency stating that the Joint Application has
15 met the sufficiency requirements outlined in Arizona Administrative Code ("A.A.C.") R14-2-502.

16 Thus, it is now appropriate to schedule a hearing in this matter and to establish other
17 procedural requirements and deadlines.

18 IT IS THEREFORE ORDERED that **a hearing** on the Joint Application shall commence on
19 **October 10, 2008, at 10:00 a.m.**, or as soon thereafter as is practicable, in Hearing Room #1 at the
20 Commission's offices, 1200 West Washington Street, Phoenix, Arizona 85007.

21 IT IS FURTHER ORDERED that Accipiter and Qwest shall **jointly, by August 21, 2008,**
22 **publish notice** of the Joint Application and the hearing, as stated below, with a heading no less than
23 12-point bold type and the body no less than 10-point regular type, in a newspaper(s) of general
24 circulation in every county in Arizona in which Accipiter and/or Qwest provide/s services.

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**PUBLIC NOTICE OF A HEARING ON THE JOINT APPLICATION OF
ACCIPITER COMMUNICATIONS, INC., DBA ZONA COMMUNICATIONS,
AND QWEST CORPORATION TO MODIFY THEIR SERVICE AREAS.
(Docket Nos. T-02847A-08-0164 et al.)**

Summary

On March 18, 2008, Accipiter Communications, Inc., dba Zona Communications ("Accipiter") and Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Joint Application requesting that the Commission expeditiously set the Joint Application for hearing and issue an Order (1) authorizing deletion of a portion of Qwest's service area and extending Accipiter's Certificate of Convenience and Necessity ("CC&N") to include that deleted portion ("Accipiter extension area"); (2) authorizing deletion of a portion of Accipiter's CC&N and adding that deleted portion to Qwest's service area ("Qwest extension area"); (3) authorizing Qwest and Accipiter to charge, within their respective extension areas, the rates and charges in their respective tariffs on file with the Commission; and (4) stating that the Commission does not object to the Federal Communications Commission's ("FCC's") granting a waiver of the FCC Study Area boundary freeze to allow Accipiter and Qwest to modify their Study Areas consistent with the service area changes authorized in the Order.

The Accipiter extension area has the following legal description:

T6N, R2W, G&SRB&M: All of Sections 4-9, 17, and 18; and

T7N, R2W, G&SRB&M: All of Sections 31-33 and the western one-half of Section 34

The Qwest extension area has the following legal description:

T3N, R2W, G&SRB&M: All of Sections 29 and 32, the western one-half of Section 28, and the southeastern one-quarter of Section 31

The Commission's Utilities Division Staff ("Staff") has not yet made a recommendation regarding the Application. The Commission will issue a decision regarding the Application following consideration of testimony and evidence presented at an evidentiary hearing. The Commission is not bound by the proposals made by Accipiter, Qwest, Staff, or any intervenors.

How You Can View or Obtain a Copy of the Application and Other Documents

Copies of the Application and the other documents filed in this matter are available at the offices of Accipiter [COMPANY INSERT ADDRESS HERE] and Qwest [COMPANY INSERT ADDRESS HERE]; at the Commission's Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public inspection during regular business hours; and on the Internet via the Commission's website (www.azcc.gov) using the e-Docket function.

Arizona Corporation Commission Public Hearing Information

The Commission will hold a hearing on this matter beginning **October 10, 2008, at 10:00 a.m.**, in Hearing Room #1 at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted by mailing a letter referencing Docket Nos. T-02847A-08-0164 et al. to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to use and instructions on how to e-mail comments to the Commission, go to

http://www.azcc.gov/divisions/utilities/forms/public_comment.pdf. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000.

About Intervention

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file an original and 13 copies of a written motion to intervene with the Commission no later than **September 11, 2008**. You must send a copy of the motion to intervene to Accipiter and Qwest, or their respective counsel, and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any party upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a customer of Accipiter, a customer of Qwest, a property owner in an extension area, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to Accipiter and Qwest, or their respective counsel, and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **September 11, 2008**. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor's obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the application or from filing written comments in the record of the case.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Linda Hogan, at LHogan@azcc.gov, voice phone number (602) 542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Accipiter and Qwest shall, jointly or severally, **by August 21, 2008, mail a copy of the above notice to each person who owns property within the Accipiter extension area and to each person who owns property within the Qwest extension area.**

IT IS FURTHER ORDERED that Accipiter and Qwest shall, jointly or severally, **no later than September 4, 2008, file with the Commission certification of mailing and publication.**

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1 IT IS FURTHER ORDERED that Staff shall file a **Staff Report** on or before **September 4,**
2 **2008.**

3 IT IS FURTHER ORDERED that any **objections to the Staff Report** shall be filed on or
4 before **September 22, 2008.**

5 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
6 105, except that all motions to intervene must be filed on or before **September 11, 2008.**

7 IT IS FURTHER ORDERED that any objections to motions to intervene must be filed on or
8 before **September 22, 2008.**

9 IT IS FURTHER ORDERED that intervenors shall file specific disagreements/comments, if
10 any, regarding the Joint Application and Staff Report by **September 22, 2008.**

11 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
12 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
13 *pro hac vice.*

14 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
15 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
16 Rules of the Arizona Supreme Court). Representation before the Commission includes appearing at
17 all hearings, procedural conferences, and Open Meetings at which the matter is scheduled for
18 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
19 Law Judge or the Commission.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
21 Communications) applies to this proceeding and shall remain in effect until the Commission's
22 Decision in this matter is final and non-appealable.

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IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

Dated this 25th day of July, 2008.


SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 25th day of July, 2008, to:

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By:


Debra Broyles
Secretary to Sarah N. Harpring